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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,438	12/08/2003	Martin Schnabel	CM2713Q	2354

27752                      7590                      08/09/2007  
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EXAMINER
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MARCETICH, ADAM M

ART UNIT	PAPER NUMBER
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3761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	Application No. 10/730,438	Applicant(s) SCHNABEL ET AL.	
	Examiner Adam Marcetich	Art Unit 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 07 May 2007.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-9 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All    b)  Some \*    c)  None of:
      - 1.  Certified copies of the priority documents have been received.
      - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Noda et al. (US 6,949,689). Noda discloses a disposable diaper 1 having absorbent member 4 interposed between a liquid permeable topsheet 2 and a liquid impermeable backsheet 3 (column 2, lines 29-32), wherein the backsheet 3 comprises a first nonwoven material 3b superposed on a breathable film 3a (column 2, lines 53-57), the backsheet having a multi-color printed pattern/ornamental design 10 (column 4, lines 9-14, figure 1), said backsheet having an L-value 10 to 93, a b-value of -5 to 0 and a c-value of less than 20 (column 4, lines 25-67), and a light transmittance/opacity of 40 to 83% (column 5, lines 5-16). Since Noda discloses a prescribed pattern 10 printed on backsheet 3, it naturally follows that backsheet 3 comprises pigments (column 4, lines 9-14).

**Claim Rejections - 35 USC § 103**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of Rogers (US 5,133,707). Regarding claims 1 and 3-6 Tao discloses film comprising non-woven material and microporous film (page 1, lines 28-30, page 11, lines 27-31) used for diaper 50 back sheet 52 (page 10, lines 1-3) having single or multiple ornamental discernible printed design graphics 20 via flexographic and gravure printing processes (page 8, lines 14-16, figures 1 and 4) and said film composite having an "L value" of 93.46, "a value" of -0.24 and "b value" of 0.35 (page 3, lines 2-9, page 8, lines 19-21, page 13, lines 9-13), said graphic not covering more than about 60% of the back sheet (figures 1-4). Tao *does not expressly disclose* an L value from 10-75. **Rogers** discloses a composite adhesive fastening tape 2 for use with diapers (column 2, lines 7-20) with an L value of 50-75 (column 4, lines 24-27), wherein the L value is a result effective variable since the higher the L value the better results in an improved obscuring effect (column 4, lines 19-22). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made modify Tao with the claimed L values for improved obscuring effect since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially

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identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of McCormack (WO 00/38915A1). Tao discloses the article as discussed above with respect to claim 1. Tao *does not expressly disclose* opacity values. Opacity is a well known result-effective variable that results in an improved color contrast for masking purposes as supported by McCormack (page 11, lines 14-22, page 22, table 2) since it is a result of the type of materials used. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Tao with the opacity and distance between rear waist edge and absorbent core end edge values as disclosed by McCormack, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164) in view of Schleinz (US 5,612,118). Tao discloses the article as discussed above with respect to claim 1. Tao *does not expressly disclose* a half-toning printing process in which one of the surfaces of the polymeric film or non-woven web that comprise the back sheet is covered with an opaque or transparent ink while a second area is covered with the same ink. **Schleinz** discloses a training pant 20 having outer cover 42 comprising elasticized substrates 50,54 with a plurality of graphics 46 printed on outer surface 44 of outer cover 42 (column 3, lines 35-40 and 54-56, column 4, lines 21-26 and 40-43), said graphics printed using a semi-tone/half-toning process

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on two different areas of the composite outer cover 42 in order to eliminate blurred or ghost graphics (column 5, lines 15-27, column 6, lines 7-19 and 47-50, figures 1-3). One would be motivated to modify the printed graphics of Tao with the half-toning printing process of Schleinz for improved graphic image quality since both references disclose disposable absorbent wearing articles with back sheets having printed graphics thereon. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the printed graphics and thus provide half-toning process printed graphics.

### ***Response to Arguments***

6. Applicant's arguments filed 07 May 2007 have been fully considered but they are not persuasive.

7. In response to Applicant's argument on p. 5 of 12 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "[a] coloring agent used to color-pigment the nonwoven web and/or polymeric film .... is added before melting the thermoplastic material comprised by the nonwoven web and/or polymeric film.") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner notes that the claims are drawn to an article, not a method of manufacture. Therefore, Noda anticipates the article in claims 1 and 2.

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8. In response to Applicant's argument on p. 6 of 12 that Noda lacks a "polymeric ... film colored by pigments comprised within the polymeric film," it naturally follows that backsheet 3 comprises pigments (column 4, lines 9-14). See 102(e) rejection for claim 1 above.

9. In response to Applicant's argument on p. 6 of 12 that Noda teaches away from the claimed invention by disclosing an L-value in a printed area, Examiner notes that teaching away from a reference only applies to rejections made under 35 U.S.C. 103(a). Claim 1 is rejected under 35 U.S.C. 102(e). The "printed area" of Noda is being interpreted to include areas away from ornamental designs. Since the disclosed measures of L-value, b-value and c-value represent an overall measure, areas substantially away from ornamental designs are capable of having values within the claimed ranges.

10. In response to Applicant's argument on p. 6-7 of 12 that there is no motivation to combine Tao and Rogers, Examiner notes that a motivation is provided for the rejection made for claim 1 under 35 U.S.C. 103(a) above. Improving the obscuring effect of an absorbent article is known in the art, as discussed above.

11. In response to Applicant's argument on p. 7 of 12 that Tao and Rogers lack the claimed limitations, Examiner clarifies the grounds of rejection. Tao discloses a backsheet comprising a nonwoven web and a polymer film joined in an overlaying region (p. 11, lines 27-31). Rogers discloses an L-value of 50-75 (column 4, lines 24-27). Tao is modified by Rogers with the motivation of improved obscuring effect.

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12. In response to Applicant's argument on p. 7-8 of 12 that Tao would be made unsatisfactory for its intended purpose, Examiner notes that using an L-value of 50-75 would not adversely affect the absorbent properties or appearance of the absorbent article of Tao. An L-value as close to 100 is desirable, and the range of 50-75 substantially approximates this value in order to provide an absorbent article of desired lightness.

13. In response to Applicant's argument on p. 8-9 of 12 that McCormack does not disclose an opacity value, Examiner points out that McCormack discloses opacity values between 76-90% (page 22, table 2). Regarding a lacking motivation, see rejection for claim 2 above.

14. In response to Applicant's argument on p. 9 of 12 that opacity is not a result-effective variable, Examiner notes that McCormack discloses opacity values, as stated above. It naturally follows that opacity will improve an obscuring effect, which is sought after in absorbent articles. Therefore, opacity is a result-effective variable.

15. In response to Applicant's argument on p. 9-10 of 12 that McCormack teaches away from Tao by disclosing a dark layer, Examiner notes that McCormack discloses this color in the alternative. Other hues are disclosed (p. 8, lines 15-21) which do not teach away from Tao.

16. In response to Applicant's argument on p. 10 of 12 that Schleinzi discloses a different process from that disclosed in the immediate application, Examiner notes that the claims are drawn to an article, not a method of manufacture. The apparatus as



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disclosed by Schleinz contains the structural limitations required to meet the claim language as discussed.

17. In response to Applicant's argument on p. 11-12 of 12 that the process of Schleinz does not create the effect of an additional color, Examiner notes that this effect is based on the perception of individual users. The inventions of Tao and Schleinz are capable of having the same structural features as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is 571-272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Marcetich  
Examiner  
Art Unit 3761

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AMM

  
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